IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

SUMMONS FOR JUDGMENT NO. 959 OF 2004
IN
SUM. SUIT NO.1049 OF 2004

M/s.Godrej Industries Ltd. Plaintiffs
vs.
M/s.AIM Software Technologies
Pvt. Ltd. & anr. Defendants

Ms.Sharila D'Souza with Yamini Chandran i/b. Umesh Shetty & Co. for the plaintiffs.

Mr.S.Samudrala with G.I.Sodhi for the defendants.

CORAM : S.U. KAMDAR,J.

DATED : 24th October 2005

P.C.

The present suit is filed for the recovery of Rs.76,67,287/- comprise of the arrears towards licence fee of Rs.63,10,190/- and a further sum of Rs.4,90,456/-. There is also a claim of TDS Certificates for the year 2000-2001 a sum of Rs.6,63,593/- and for the year 2001-2002 a sum of Rs.2,02,958/-. The claim in the present case arises under Leave and Licence Agreement executed by and between the plaintiff and the defendant which is at Exhibit A being dated 17.1.2000. As far as the defendant no.2 is concerned, he has executed a declaration with letter of guarantee for the aforesaid payment. The agreement has been terminated by a letter dated 25.7.2002 by the defendant. The said letter is at Exhibit E to the plaint. In the said letter at Exhibit E, it is specifically stated that the amount has already

been admitted as is evidence from the following paragraph:

> "We hereby confirm that an amount of Rs.68,00,736/- (Rupees Sixty Eight Lac Seven Hundred Thirty Six only) is due and payable towards the monthly licence fee/compensation, service fee/compensation and incidental reibursement of electricity water and bus charges as also the TDS Certificate amount to Rs.8,67,958/- (Rupees Eight Lac sixty seven thousand Nine Hundred Fifty Eight only) together with interest thereon which we hereby undertake to pay the same within six months from the date of this letter, failing which you shall be at liberty to recover the same by enforcing the personal guarantee given by me."

2. However, the learned counsel for the defendant contends that the agreement for leave and licence is in effect is the lease agreement and, thus, not properly and duly stamped under the Bombay Stamp Act. I have perused the agreement. I do not find any substance in the aforesaid contention. From the tenor of the agreement, it is clear that it is the leave and licence agreement. The defendant has also terminated the said leave and licence and have vacated the premises. In that view of the matter, the defence that it is a lease and not a licence agreement cannot be accepted. The next defence raised is that though the leave and licence agreement dated 17.1.2000 but in fact the date on which it commenced is different. I find no material in support of the aforesaid contention. In that view of the matter, I find no defence in the present Suit. However, with a view to given an opportunity to the defendants to defend the Suit, I direct the defendants to deposit the sum of Rs.75 lacs in this Court within a

period of four weeks from today failing which the plaintiff will be entitled to decree. The amount if so deposited, The Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgement disposed of accordingly.

3. Suit transferred to the list of Commercial Causes. Written statement or points of defence to be filed within four weeks from the date of deposit. Affidavit, list of documents to be filed within four weeks thereafter. Inspection and discovery within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U. KAMDAR,J.)